HUNDRED AND EIGHTH REPORT

PUBLIC ACCOUNTS COMMITTEE (1981-82)

(SEVENTH LOK SABHA)

UNION EXCISE DUTIES— KNOCKED DOWN CONDITION

MINISTRY OF FINANCE (DEPARTMENT OF REVENUE)

Presented to Lok Sabha on 29 April 1982
Laid in Rajya Sabha on 29 April 1982

LOK SABHA SECRETARIAT
NEW DELHI

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INTRODUCTION

1. The Chairman of the Public Accounts Committee, as authorised by the Committee do present on their behalf, this 108th Report on Paragraph 2.51 of the Report of the Comptroller & Auditor General of India for the year 1979-80, Union Government (Civil), Revenue Receipts, Vol. I. Indirect Taxes relating to Knocked down condition.

2. The Report of the Comptroller & Auditor General of India for the year 1979-80, Union Government (Civil), Revenue Receipts, Vol. I. Indirect Taxes was laid on the Table of the House on 17 March, 1981.

3. In this Report the Committee have dealt with certain cases of short levy of excise duty pointed by the Audit in terms of the instructions issued by the Central Board of Excise and Customs in September, 1977 on goods cleared in knocked down condition to be manufactured|assembled at site and over a period of time against a particular contract. After dealing with some of the implications of the latest instructions issued in this behalf by the Board in February 1981, the Committee have recommended that the Ministry of Finance should seek the opinion of the Ministry of Law and review the cases pointed by Audit in the light of the observations made by the Committee.

4. Where a manufacturer opts for assessment of goods falling under item 68 of the Central Excise Tariff on the basis of invoice prices in terms of notification No. 120|75-CE dated 30 April, 1975 the invoice price will be accepted as assessable value under Section 4 of the Central Excise and Salt Act 1944 provided the manufacturer satisfies certain conditions. Keeping in view the fact that in cases of clearance of machinery in parts in knocked down condition to be manufactured|assembled at site over a period of time, the contract is for the whole machinery, the Committee have felt it imperative that suitable measures are taken in order to ensure that parts are not undervalued in such clearances. The Committee have, therefore, recommended that the Ministry of Finance should examine the desirability of applying notification No. 120|75-CE dated 30 April, 1975, in such cases.

5. The Committee (1981-82) examined paragraph 2.51 on the basis of the written information furnished by the Ministry of Finance (Department of Revenue). The Committee considered and finalised the Report at their sitting held on 23 April, 1982. Minutes of the sitting of the Committe form Part II of the Report.

6. For facility of reference and convenience the observations and recommendations of the Committee have been printed in thick type in the body of the Report and have also been reproduced in a consolidated form Appendix VII to the Report.

7. The Committee would like to express their thanks to the Ministry of Finance (Department of Revenue) for the cooperation extended by them in giving information to the Committee.

8. The Committee also place on record their appreciation of the assistance rendered by the Office of the Comptroller and Auditor General of India in the examination of this Paragraph.

NEW DELHI

SATISH AGARWAL,
Chairman
Public Accounts Committee.

28 *April*, 1982
8 *Vaisakha*, 1904 (*S*)

REPORT

Audit Paragraph

Knocked down condition

1.1 According to the instructions issued by the Central Board of Excise and Customs in September 1977 when goods are cleared in knocked down condition to be assembled at site and over a period of time against a particular contract, the clearances are assessable to duty provisionally and the value of the article in completely assembled condition should be taken for assessment purposes.

1.2 Five units in two Collectorate manufacturing various items of machines falling under tariff item 68, entered into contracts for manufacture and supply of such machines. The machines were cleared in knocked down condition over a period of time from the factories on payment of duty on the basis of invoice value under notification dated 30th April 1975 at the rates prevalent at the time of clearances of the parts of such machines. This was not regular as goods assessable to duty are the completed articles and the duty at the rate prevalent on the date of completion of the contract/assembly of goods is, therefore, to be levied on the total value of the machines including assembling charges. The incorrect assessment led to a short levy of duty of Rs. 24,77,086 calculated at the rates prevalent during February 1977 to May 1979 when the contracts were finalised.

1.3 While accepting the objection in three cases Ministry of Finance have stated (July 1980) that in one case the demand of Rs. 2,33,520 has been confirmed but the amount is pending realisation. They have added that show cause-cum-demand notices for Rs. 5,22,071 and Rs. 22,919 issued in other two cases are under process of adjudication.

1.4 Ministry's reply in respect of remaining two cases is awaited (December 1980).

[Paragraph 2.51 of the Report of the Comptroller and Auditor General of India for the year 1979-80, Union Government (Civil), Revenue Receipts, Volume-I, Indirect Taxes]

Assessment of duty on goods cleared in knocked down conditions—Instructions issued in 1977

1.5 The goods which are cleared in parts in knocked down condition over a period of time against a particular contract are to be assessed to duty provisionally and when the contract is completed and the goods are assembled, the value of the assembled goods should be ascertained and finally assessed to duty taking into account the rate of duty prevalent on the date of completion of the contract/assembling of the goods.

1.6 In this connection the Central Board of Excise and Customs in their letter F. No. 202/46/76/CE6, dated 9 September, 1977 (Appendix I) *inter alia* clarified that :

(i) the goods which are cleared over a period of time, in parts against a particular contract have to be obviously assessed to duty provisionally and when the contract is completed, the assessment should be finalised in the manner as any other type of provisional assessments are finalised. There should not be any great problem about valuation also as in respect of goods covered under tariff item 68, the invoice price has to be accepted at the option of the assessee.

(ii) In respect of goods which are assembled at site, the clearance should be treated as clearance in the knocked down condition. The value of the goods in the assembled condition should be relevant for assessment purpose and should include the value of the parts, which may have been supplied from outside and may not have been necessarily cleared from the factory. What is to be assessed in this case is the completed article.

(iii) As regards licensing, the premises where an article is to be assembled or erected need not be licensed. It is the manufacturer who is required to obtain a licence and not the consumer even though the manufacturing activity has to extend to the premises of the consumer.

Chargeability of duty under tariff item 68

1.7 A residuary tariff item 68 to cover "all other goods not elsewhere specified" manufactured in a factory was introduced in the Central Excise Tariff with effect from 1 March 1975 as per Finance Act, 1975, the rate of duty being one per cent upto 17 June, 1977, two per cent from 18 June, 1977 to 28 February, 1978, five per cent from 1 March, 1978 to 28 February, 1979 and eight per cent from 1 March, 1979. The expression "not elsewhere specified" referred to in Tariff Item 68 means the total omission or failure to specify goods in the First Schedule to the Central Excises and Salt Act, 1944. In other words, to attract item 68, there must be a total omission of specification of goods in any of the items preceding item 68.

1.8 One of the requirements for determining duty liability under tariff item 68 is that the goods should be manufactured in a factory.

1.9 The explanation below tariff item 68 defined the expression "factory" as under :

"In this item the expression "factory" has the meaning assigned to it in Section 2(m) of the Factories Act, 1948."

1.10 In the budget of 1979-80 the words, "manufactured in a factory" were omitted from the tariff description by deleting the explanation below tariff item 68 referred to above. However, goods falling under this item manufactured in any premises other than in a factory as defined in

Section 2(m) of the Factories Act, 1948 are exempt from the levy *vide* notification 85|79, dated 31 March, 1979. Thus, in effect, the levy was continued to be applied only to goods manufactured in a factory as defined in Section 2(m) of the Factories Act, 1948.

Definition of "factory" in the Factories Act, 1948

1.11 Broadly speaking "factory" is a premises (including precincts) where some kind of manufacturing process is carried on with the help of workers. The definition of the term 'factory' as contained in Section 2(m) of the Factories Act, 1948 is as under :

"Factory" means any premises including the precincts thereof.....

(i) whereon ten or more workers are working or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is carried on with the aid of power, or is ordinarily carried on, or

(ii) whereon twenty or more workers are working or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952 or a railway running shed."

1.12 Under Section 2(k) of the Factories Act, 1948 'manufacturing process' means any process for.....

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adopting any article or substance with a view to its use, sale, transport, delivery or disposal, or

(ii) pumping oil water or sewage, or

(iii) generating, transforming or transmitting power ;

(iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book-binding.

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels.

Valuation of goods for assessment under tariff item 68

1.13 Section 4 of the Central Excises and Salt Act, 1944 read with Notification No. 120/75-CE, dated 30 April, 1975 (Appendix II) provides for following two alternate methods of valuation of goods falling under tariff item 68 for the purpose of levying excise duty :

(i) The value can be determined in accordance with the provisions contained in Section 4 of the Central Excises and Salt Act, 1944, or

(ii) The invoice prices can be accepted as assessable value.

1.14 Where the manufacturer has not opted for the acceptance of invoice prices under Notification No. 120/75-CE, dated 30 April, 1975, the valuation of his goods will be done in terms of Section 4.

Concession of duty under Notification No. 120/75, dated 30 April, 1975

1.15 Where the manufacturer has opted for assessment on the basis of invoice prices in terms of Notification of 30 April, 1975 the invoice prices will be accepted as assessable value under Section 4, provided the manufacturer *inter alia* satisfies the following conditions :—

(i) files with the jurisdictional Superintendent of Central Excise a written declaration to the effect that he opts to avail of the said exemption.

(ii) certifies that the price referred to in the invoice represents the price actually charged by him for the relevant sale and that the price is the sole consideration for the sale.

(iii) the invoice price is not influenced by any commercial, financial or other relationship whether by contract or otherwise between the manufacturer or any person associated in business with the manufacturer and buyer other than the relationship created by sale of the aforesaid goods.

1.16 In cases of clearance of machinery in parts in knocked down condition to be manufactured/assembled at site, the contract is for the supply of complete machinery. In the context of the conditions stipulated for availing of concessional duty on the basis of invoice price under Notification No. 120/75, dated 30 April, 1975 the Committee desired to know whether the Ministry of Finance would accept the invoice price in such cases as the sale price for the assessment of duty when there was no contract price for the parts, the contract being for the whole project. The Ministry of Finance (Department of Revenue) in their note stated as follows :—

"Yes, the point that will be relevant in acceptance of the invoice price would be that it is a 'final' and not a 'provisional' price. If the price is subject to escalation or variation in the contract, the invoice price may not be acceptable."

1.17 To a question of the Committee as to whether the clearance of parts of the machinery in such cases represented the sale in commercial parlance, the Ministry of Finance (Department of Revenue) replied in the affirmative.

1.18 Enquired whether the Ministry of Finance would accept the certificate of the manufacturer in such cases to the effect that the price in the invoice represented the price actually charged and that the price was the sole consideration for the sale, the Ministry of Finance (Department of Revenue) stated as under :

"Yes, subject to verification of sale agreement and the relationship subsisting between the buyer and the seller. What is important is the independent character of the sale price and the components of sale price are normal."

1.19 Asked when the machinery was to be supplied under a contract, would the invoice price for the parts of such machinery not be treated as influenced by special relationship by contract between the manufacturer and the buyer, the Ministry of Finance (Department of Revenue) stated as follows :—

"No. The contract is normally for a turnkey project and in all probability the contracted amount may include so many other factors like fabrication and erection charges, overhead transportation charges and sundry charges. Further, invoice price is already acceptable for goods falling under Item 68 for the purposes of valuation. Hence, it cannot be said that there is deviation either in procedure or the principle adopted in such cases."

Instructions issued in 1978

1.20 The Ministry of Finance (Department of Revenue) in their instructions issued *vide* F. No. 350/8/76-TRU, dated 23 January, 1978 (Appendix III) regarding assessment of goods manufactured at site under tariff item 68 stated that the cases may be decided on their merits in the light of the definition of the expression 'factory' and 'manufacturing process' given in the Factories Act, 1948 and the advice of the Ministry of Law enclosed with the above letter.

1.21 On the question whether turnkey projects can be considered as factories under the Factories Act, 1948 for attracting levy of excise duty under tariff item 68, the Ministry of Law opined that the Factories Act, 1948 would cover factories at site if they satisfy the condition regarding the number of workers employed and if a manufacturing activity is carried on in such premises.

1.22 Regarding classification of goods manufactured in turnkey projects or its construction sites, the Ministry of Law opined that the main criteria would be whether such goods can be considered as manufactured goods attracting levy under tariff item 68 and should be considered on merits of each case under the Central Excise Rules.

Audit objections

1.23 In the paragraph under examination, the Audit has pointed out certain cases in which the goods were cleared in knocked down condition to be assembled at site over a period of time and the procedure outlined in the Board's instructions dated 9 September, 1977 were not followed.

1.24 The Collectorate-wise description of assessees, the period and amount of short levy are indicated in the Table given below :

S.No.	Name of the assessee	Period	Amount (Rs.)
	Baroda Collectorate		
1.	M/s. National Machinery Manufacturing Co., Baroda	9-3-1979 to 11-5-1979	2,33,520
2.	M/s. Sayaji Iron & Engineering Pvt. Ltd., Baroda	22-2-1977 to 11-4-1979	4,58,566
3.	M/s. Bharat Textile Works, Ahmedabad.	31-3-1978 to March, 1979	22,919
	Calcutta Collectorate		
4.	M/s. G.E.C. of India Ltd., (AEI Works), Calcutta	1977-78	4,38,821
5.	M/s. Jessop & Co. Ltd., Calcutta	July 77 to May 1978	13,23,260
			24,77,086

1.25 The Committee learnt from Audit that in the first four cases mentioned above duty was paid on the basis of invoice price at the rates prevalent at the time of clearance of such parts under Notification No. 120/75 dated 30 April, 1975 instead of on the value and at the rates prevalent on the date of completion of the contract assembly of manufactured parts and machinery at site. In the remaining fifth case, M/s. Jessop & Co. Ltd., Calcutta who were engaged in the manufacture of various type of gates, cranes, structurals, paper making machinery, ropeways, road rollers, cold saw (circular machines) etc. falling under tariff item 68, the position was just the reverse. The duty was paid on the entire value of goods even before all of their parts were despatched from the factory.

Ministry's reply to Audit

1.26 It has been stated in the Audit paragraph that the Ministry of Finance had accepted the objection in three cases. These cases were of (1) M/s. National Manufacturing Co., Baroda (2) M/s. Sayaji Iron & Engineering Pvt. Ltd., Baroda and (3) M/s. Bharat Textile Works, Ahmedabad. The Ministry of Finance had informed the Audit about the position of demand in these cases as under :

> "The demand for Rs. 2,33,520.00 in respect of M/s. National Machinery Manufacturing Co. Baroda has been confirmed but the amount is pending realisation. Show cause-cum-demand notices for Rs. 5,22,071.10 and Rs. 22,919.40 have been issued to M/s. Sayaji Iron and Engineering Pvt. Ltd., Baroda and Bharat Textile Works, Ahmedabad respectively. These are under the process of adjudication by the jurisdictional Assistant Collectors concerned."

1.27 Regarding the other two cases of Calcutta Collectorate, the Ministry of Finance had replied to the Audit on 24 August, 1981 as under :

> "In the case of M|s. G.L.C. India Ltd. the assessee was asked to pay duty on the price inclusive of the bought items but the assessee filed a writ petition in the Calcutta High Court. The matter has, therefore, become subjudice and it will not be appropriate for the Ministry to offer comments at this stage."

1.28 As regards M|s. Jessop & Co. Ltd. Calcutta, a demand for Rs. 13,23,260.18 has been raised against the assessee and is under process of adjudication.

1.29 In their note furnished to the Committee, the Ministry of Finance (Department of Revenue) stated that the latest position of the under-assessed duty was being ascertained from the respective Collectorates.

1.30 To a question of the Committee as to whether any similar failure had taken place in other Collectorates, the Ministry of Finance (Department of Revenue) in their interim note also stated that details of similar cases were being gathered from the Collectorates.

1.31 In a subsequent note furnished to the Committee, the Ministry of Finance (Department of Revenue) stated as under :—

> "The objection, contained in the Audit Para in respect of units involved in the Baroda Collectorate, was further examined in the light of Board's instructions F. No. 13/10/81-CX-1, dated 25-2-1981.
>
> It is observed that in case of goods falling under Tariff item 68 cleared in knocked down condition what are chargeable to duty at the time of removal are the parts of such goods, plants and machinery etc. and not the "completed articles" *viz.* plant and machinery etc. The duty payable on the parts will be at the rate prevalent on the date of their actual removal as provided under Rule 9A(1)(ii) of Central Excise Rules, 1944. provisional assessment is to be resorted to only in those cases where the value of such parts is not known at the time of their removal. But in all cases where the value of the parts is finally known assessment need not be made provisional. Once these parts are cleared on payment of duty unless specifically exempted, the further liability of duty on the "completed articles" produced by assembling these parts alongwith bought-out items, if any, will arise only when such assembly involves "manufacture" and the site at which assembly takes place is a "factory", premises. In case of plant and machinery, it is first to be examined if these plants and machinery are "goods" manufactured in a "factory", that is, they are bought and sold after "manufacture" in that factory and in case the plants and machinery assesmbled and installed at site as a "total entity is not capable of being sold as goods, no further duty is payable.

Since in the cases involved in the Audit Para the goods were cleared in parts at the rate prevalent on the date of the actual removal, no irregularity as such has taken place."

1.32 In their note, the Ministry of Finance (Department of Revenue) have also stated that since the duty on the parts was correctly payable at the rates prevalent on the date of their actual removal the question of similar failure, if any, does not arise.

1.33 The instructions contained in the circular letter issued by the Central Board of Excise and Customs on 25 February, 1981 are dealt with in the succeeding paragraphs.

Instructions issued in February 1981

1.34 The dutiability of machines assembled at site under tariff item 68 was discussed in the 13th South Zone Tariff Conference held in September, 1980, 13th North Zone Tariff Conference held in October, 1980 and 10th East Zone Tariff Conference held in December, 1980.

1.35 On the basis of the discussions held in the above three tariff conferences, the Central Board of Excise and Customs issued guidelines about the classification of machinery assembled at site under tariff item 68 *vide* their letter F. No. 13/10/81-CXI, dated 25 February, 1981 (Appendix IV). In the instructions it was *inter alia* clarified :

(1) That each of the individual item of goods which are cleared for use in the assembly should pay duty at the time of their clearance from the factory of their production unless specifically exempted ;

(2) that for the further liability of the plant and machinery to duty the broad criteria to be satisfied would be :—

(a) whether manufacture has taken place ;

(b) whether what is produced is 'goods' and whether the site is a 'factory' since all goods falling under tariff item 68 manufactured in any premises other than the factory are exempt from whole of duty under notification No. 85/79 dated 1 March, 1979.

1.36 On the above criteria it was held that the 'assembly' of various components to make a new commodity would amount to 'manufacture'.

1.37 Regarding plant and machinery it was stated that they are fixed to the ground and may not merit to be called 'goods' under certain conditions.

1.38 About production in a 'factory' it was stated that it is a question of fact which has to be ascertained. However, this would be necessary only in respect of 'goods' which are manufactured in the premises where they are intended to be installed.

Further clarification in May 1981

1.39 The Central Board of Excise and Customs in their circular letter issued *vide* F. No. 13/10/81-CX-1, dated 13 May, 1981 (Appendix V) further clarified that the intention of instructions issued on 25 February, 1981 was only to issue broad guidelines for the use of Collectorates in deciding various cases and while making use of the guidelines, all other relevant factors germane to the issue may also be made use of in deciding pending cases.

1.40 Paragraph 3.3 of the circular No. F. No. 13 10|81-CX-1 dated 25 February, 1981 issued by the Central Board of Excise and Customs to all Collectors of Central Excise and Customs read as follows :

> "On the question whether 'installations' would merit to be called 'goods' the conference noticed that 'Sale of Goods Act, 1930 defines goods' in the following terms :
>
> "Goods means every kind of moveable property other than actionable claims and money ; and includes stocks and shares, growing crops and things attached or forming part of the land which are agreed to be severed before sale or under the contract of sale".
>
> In the case of Plant and Machinery assembled and installed at site, they are firmly affixed to the ground and normally are not intended to be moved. Further they are not intended for sale even though there may be cases of transfer of ownership or even dismantling and sale. Accordingly, these may not merit to be called 'goods'."

1.41 The Committee desired to know the reasons for taking the help of provisions of the 'Sale of Goods Act, 1930, when levy of execise duty in such cases was governed by Central Excises and Salt Act, 1944. The Ministry of Finance (Department of Revenue) in their note stated as follows :—

> "Help of the provisions of Sale of Goods Act, 1930 is taken only to determine whether any sale transaction of goods has taken place or not. A sale takes place (in cases like this) at the completion of contract and duty has already been paid at the time of clearance of goods from the factory. This being so, there is no scope for levy of duty for the second time."

1.42 On being enquired as to whether the term 'goods' or 'excisable goods' had been defined in the Central Excises and Salt Act, 1944, the Ministry of Finance (Department of Revenue) in their note stated as under :—

> "The term 'excisable goods' has been defined in Section 2(d) of the Central Excises and Salt Act. According to this definition, 'excisable goods' mean goods specified in the First Schedule as being subject to a duty of excise and includes salt". The term 'goods' has, however, not been defined in the said Act. Item 68 of the Central Excise Tariff refers to all other goods

not elsewhere specified but excluding goods falling under sub-items (a), (b) and (c) of item No. 68. Thus for the purpose of Tariff item 68 which is unspecified item, what is perhaps more relevant is the meaning of "goods" and not "excisable goods". The term 'goods' is nowhere defined in the Central Excises and Salt Act and, therefore, in the absence of definition in the parent Act it was considered prudent to rely on another enactment of the Parliament to take help or assistance in streamlining the procedure. Moreover, by seeking to rely on the definition of the goods in the Sale of Goods Act, 1930, the point sought to be emphasised was that when plant and machinery are firmly affixed to ground, they become a property and they are not intended to be moved as such for sale or other purposes."

1.43 Asked whether the opinion of the Ministry of Law had been obtained before issuing guidelines as specified in para 3.3 of the Board's circular dated 25 February, 1981 on the basis of definition of 'goods' given in the Sale of Goods Act 1930 for dealing with cases falling under another Act passed by Parliament, the Ministry of Finance (Department of Revenue) stated as follows :—

"It is a fact that the opinion of the Law Ministry was not obtained before the issue of the instructions dated 25-2-1981."

1.44 As stated above, the Central Board of Excise and Customs in para 3.3 of their circular dated 25 February, 1981 had also contended that machinery affixed to the ground does not merit to be called 'goods' as they are not intended to be moved or sold.

1.45 In this context, the Committee desired to know whether the machinery in all cases was not affixed to the ground would be treated as 'goods' for levying duty. In a note furnished to the Committee, the Ministry of Finance (Department of Revenue) stated as follows :—

"Normally machinery and plant assembled in turn-key projects are affixed to the ground. When such assembled machinery are not affixed to the ground, to determine whether any 'goods' have come into existence, one has to examine the case with reference to the parameters namely; whether such goods are manufactured in a 'factory', whether any 'manufacture has taken place, whether any new 'goods' as known to the trade have come into existence etc."

1.46 When asked to indicate the category in which the cases mentioned in the Audit Para fell the Ministry of Finance (Department of Revenue) in their note stated as under :

"In case of the units involved in the Baroda Collectorate, it has been reported by the Collector concerned that the items of machinery supplied were affixed to the ground.

In Calcutta Collectorate, the two unites involved are M/s. Jessop and Company Ltd., and M|s. G. E. C. of India Ltd., M/s. Jessop and Company Ltd. cleared the following items :—

(1) Structural fabrication ;

(2) Cranes ;

(3) Paper making plant ;

(4) Barrage gates and other gates ; and

(5) Boiler components.

In all the cases except mobile cranes, the goods cleared in knocked down condition are affixed to the ground at site when they are assembled and/or erected. The items referred to in the Audit Para relate to the structural fabrication, which are ultimately affixed to the ground. The Company has entered into contract for construction at site of a particular project against a contract value. Payments are made by the consignee on instalment basis with the progress of the work by raising invoices.

M/s. G.E.C. of India manufacture electric furnaces, which are ultimately affixed to the ground. After such erection on the ground, the furnaces cease to be goods being not moveable. This matter is, however, sub-judice, as the assessee has filed a writ petition in the Calcutta High Court."

1.47 According to the circular issued by the Central Board of Excise and Customs on 25 February, 1981, assessment of the machinery assembled or erected at site under tariff item 68 would depend on whether assembly/erection would amount to manufacture bringing into existence a new commodity with distinctive name, character and use and also whether the site can be treated as factory in terms of Section 2 of the Factories Act, 1948.

1.48 In this connection, the Committee wanted to know as to why the assembly/erection at site cannot be treated as factory in cases where ten or more workers are employed for completing these projects with the aid of power or twenty or more workers without the aid of power. The Ministry of Finance (Department of Revenue) stated as under :—

"It is matter of fact and has to be determined in each case whether such "places" are "factories" within the meaning of section 2(m) of the Factories Act. Moreover, whether excisable goods are manufactured in such places, is again a matter of fact. No general comment can be given."

1.49 The Committee desired to know whether the guidelines on the subject issued on 25 February 1981 had superseded the earlier instructions issued in September, 1977. The Ministry of Finance (Department of Revenue) in their note stated as follows :—

"No. The Board's instruction issued on 25-2-1981 does not supersede the earlier instructions issued in September, 1977."

1.50 Asked what were the cases covered by the instructions contained in the letter issued in September, 1977, the Ministry of Finance (Department of Revenue) stated as under :

> "The instructions issued in 1977 are of general nature and do not cover any specific cases."

Procedural relaxations for goods covered under tariff item 68

1.51 The Committee learnt that *vide* Central Excise (18th Amendment) Rules 1979 effective from 1 August, 1979 it was decided that manufacturers of goods falling under T.I. 68 should follow the normal excise procedure applicable to other assessees working under the Production Based Control. However, some major procedural relaxations given earlier to the manufacturers covered by this item were retained in the case of those supplying goods in knocked down condition. The Committee desired to know the reasons for granting special relaxable in these cases. In the reply, the Ministry of Finance (Department of Revenue) in their note stated as follows :—

> "Since the chances of evasion of excise duty by manufacturers of goods falling under item 68 increased with the enhancement in the rate of duty from 1 per cent *ad valorem* in 1975 to 8 per cent *ad valorem* in 1979 it was decided to withdraw the simplified procedure and bring the manufacturers under the normal excise control. Such withdrawal was not, however, intended to impose unnecessary additional procedural burden on the manufacturers. In view of the peculiarity of this excise, some relaxations granted earlier had, therefore, to be retained.
>
> There were a large varieties of goods covered by this item and some of the large manufacturers produced varities running into thousands. It would not have been practicable for them to maintain Central Excise records separately and in respect of each variety of goods. It was, therefore, decided that the facility of grouping of the goods for accounting purposes should be retained.
>
> Since such large manufacturers maintained adequate private accounts and instance on maintenance of separate statutory central excise record by them would have been an unnecessary burden on them, it was decided to accept the private accounts of such manufacturers. Actually such facility had already been granted to manufaturers working under the Records Based Control.
>
> Most of the manufacturers had been paying excise duty on the basis of invoice value under notification No. 120/75-CE dated 30-4-1975. In case of turnkey project or the goods supplied in knocked-down condition in several part consignments spread over a period of time the contract indicated the price for the entire turnkey project or the completed goods supplied in parts in knocked down condition. Invoice was also issued on completion of turnkey project or supply of goods. Hence invoice price at the time of clearance of parts of turnkey project or part

consignments of the goods in knocked down condition was not available at the time of actual removal of the part consignments from the factory. For this reason a provision for submission of provisional RT-12 return every month till the project/supply was completed and final return within three months of completion of the project/supply, was made.

As mentioned above, most of the manufacturers paid excise duty on the basis of invoice value. Where the duty was paid on the basis of invoice value there was no need to file a price-list indicating the assessable value under Section 4 of the Central Excise and Salt Act, 1944 for prior approval. Hence such manufacturers were exempted from submission of price-list for prior approval. It may be pertinent to point out here that even in respect of the manufacturers producing other goods falling under Tariff Item 1 to 67 prior approval of price-list was required only in respect of certain situations only as specified in rule 173-C of the Central Excise Rules, 1944.

There had been cases where quantum of duty could not be determined at the time of removal of the goods from a factory, e.g. where the invoice was issued by the Head Office of the manufacturing firm subsequent to removal of the goods or the quantity/value of the goods, cleared was determined subsequent to their removal from the factory. It, therefore, became necessary to allow payment of duty within one week of the clearance of the goods to make payment on the basis of average weekly duty paid during the proceding month.

1.52 In view of the above, the Ministry of Finance (Department of Revenue) further stated, that granting the above relaxations was valid even after the issue of Board's circular letter dated 25 February 1981.

1.53 As per Ministry of Finance (Department of Revenue) circular letter No. 33|79 issued under F. No. 202|18-M/77-cx. 6 dated 23 July 1979 an assessee undertaking manufacture of turnkey projects or supply goods in knocked down condition in several part consignments spread over a period of time is alowed to submit provisional RT-12 returns every month till the project/supply is completed. The final return was required to be submitted within three months of completion of the project|supply and assessment finalised on the basis of such returns.

1.54 The Committee enquired whether the above instructions for submitting provisional RT-12 returns by the assessee in these particular case were till necessary after the issue of Board's instructions of 25 February, 1981. In their note, the Ministry of Finance (Department of Revenue) replied as follows:

"Invoice price on the basis of which assessment is to be done, is not available at the time of removal of parts of a turnkey project, taken in C.K.D. condition for assembly at site. Hence assessment of these parts at the time of their removal cannot be finalised even after issue of the Board's instructions of

25th February, 1981. It is, therefore, still necessary that the Provisional RT-12 returns are filed and the assessment is finalised on submission of final 12-RT return after completion of turnkey project."

1.55 Tariff item 68 was introduced in the Central Excise Tariff with effect from 1 March, 1975 to cover 'all other goods not elsewhere specified'. Section 4 of the Central Excises and Salt Act, 1944 read with Notification No. 120|75 dated 30 April, 1975 provides for two alternate methods of valution of goods falling under tariff item 68 for the purpose of levying excise duty. Accordingly, the value can be determined either in terms of the provisions contained in Section 4 of the Central Excises and Salt Act, 1944 or the invoice prices can be accepted as assessable value. Where the manufacturer opts for assessment on the basis of invoice prices in terms of notification dated 30 April, 1975, the invoice prices will be accepted as assessable value subject to the assessees' satisfying certain conditions.

1.56 According to the instructions issued by the Central Board of Excise and Customs in September, 1977 when goods are cleared in knocked down condition to be assembled at site and over a period of time against a particular contract, the clearances are assessable to duty provisionally and the value of the article in completely assembled condition should be taken for assessment purposes.

1.57 In the Audit Paragraph under examination it has been pointed out that five units in two collectorates (3 units in Baroda and 2 units in Calcutta Collectorates) manufacturing various items of machines falling under tariff item 68, entered into contracts for manufacture and supply of such machines. The machines were cleared in knocked down condition over a period of time from the factories on payment of duty on the basis of invoice value under notification dated 30 April, 1975 at the rates prevalent at the time of clearances of the parts of such machines. This was not regular as goods assessable to duty are the completed articles and the duty at the rates prevalent on the date of completion of the contract/supply of goods is, therefore, to be levied on the total value of the machines including assembling charges. According to the Audit, the incorrect assessment led to a short levy of duty of Rs. 24.77 lakhs calculated at the rates prevalent during February, 1977 to May 1979 when the contracts were finalised.

1.58 The Committee find that while communicating their comments to the draft Audit paragraph, the Ministry of Finance accepted the audit objection in three cases in the Baroda Collectorate. The Ministry had also informed that in two cases the show cause-cum-demand notices were under process of adjudication and in one case the demand was confirmed but the amount was pending realisation. Out of the remaining two cases (reported from Calcutta Collectorate) one was stated to have become *sub judice* **and the other one demand raised was under the process of adjudication. Later, the Ministry of Finance have however informed the Committee that the audit objection was further examined in the light of the fresh instructions issued by the Central Board of Excise and Customs on 25 February 1981 and the Ministry have now maintained that no irregularity as such had taken place.**

1.59 The Committee find that the Central Board of Excise and Customs issued fresh guidelines on 25 February 1981 on classification of plant and machinery assembled at site under tariff item 68 after the matter was discussed at Zonal Tariff Conferences held in September, October and December, 1980. In the said instructions, the Board held the view that each of the individual items of goods which are cleared for use in the assembly should pay duty at the time of their clearance from the factory of their production, unless specifically exempt. Further liability of duty on the completed articles produced by assembling these parts alongwith boughtout items, if any, will arise only when such assembly involves "manufacture" and the site at which assembly takes place is a 'factory' premises. In the case of plant and machinery, it is first to be examined if these plants and machinery are 'goods' manufactured in a 'factory', that is, they are bought and sold after 'manufacture' in that factory and in case the plants and machinery assembled and installed at site as a total entity is not capable of being sold as goods, no further duty is payable. According to the Ministry in the cases involved in the Audit Paragraph goods were cleared in parts at the rates prevalent on the date of the actual removal and, therefore, no irregularity had taken place.

1.60 The Committee were informed that the instructions issued by the Central Board of Excise and Customs on 25 February, 1981 did not supersede the earlier instructions issued in September, 1977. According to the Ministry of Finance, "the instructions issued in 1977 are of general nature and do not cover any specific cases." From the information furnished to the Committee it is, however, seen that the instructions issued in September, 1977, in fact, were in response to certain specific references made by the Collector of Central Excise, Hyderabad. As such, if the genuine intention of the issue of instructions in February 1981 was to cover specific cases, as is now being contended by the Ministry, it would have been fairly reasonable to expect from the Central Board of Excise and Customs to lay down adequate guidelines in 1977 itself immediately after the specific references were received from the Collector of Central Excise, Hyderabad. The inordinate time gap of more than 3-1/2 years on the part of the Board to lay down proper guidelines had apparently resulted in a lot of confusion in classifying plant and machinery assembled at site under tariff item 68. What is all the more intriguing is that even the resultant position after the issue of instructions in February 1981 does not appear to be free from confusion so much so that in no less than a period of three months, the Board had again to issue further clarifications (i.e. on 13 May, 1981) on the matter. Some of the implications of the instructions issued in February, 1981 are dealt with in the succeeding paragraphs.

1.61 The Committee note that in the instructions issued on 25 February, 1981, the Central Board of Excise and Customs had referred to the definition of 'goods' given in the Sale of Goods Act, 1930 for the purpose of making assessments of plant and machinery manufactured/ assembled at site. The term "goods" had not been defined in the Central Excises and Salt Act, 1944 and only the term "excisable goods" has been defined in Section 2(d) of the Act. It is pertinent to point out that the Central Excises and Salt Act, 1944 does not stipulate sale of goods for the purpose of levy of duty, the duty being levied on manufacture and

not on their sale. According to the Ministry of Finance, "in the absence of a definition in the parent Act it was considered prduent to rely on another enactment of the Parliament to take help or assistance in streamlining the procedure". In the cases mentioned in the Audit Para, the Ministry of Finance, in their latest replies, have gone only by the fact that the 'machines supplied were affixed to the ground'. This fact, by itself, is not enough to take the machines out of the definition of movables. The Transfer of Property Act defines the phrase 'attached to the earth' to mean, rooted in the earth as in the case of trees or shrubs, embedded in the earth as in the case of walls or buildings, or attached to what is so embedded for the permanent beneficial enjoyment of that to which it is attached. In order to determine what is or what is not immovable as a result of attachment or annexation to land two tests have been laid down, viz. (i) the degree or mode of annexation, and (ii) the object of annexation. (Commissioner of Income Tax Vs. Bhurangiya Coal Co.—AIR 1953 Pat. 298) what has to be seen is whether the annexation is with the object of permanent beneficial enjoyment of the land or building; machinery attached by bolts to special concrete base so that it could not be easily moved was held not to be part of the structure housing it, or the soil beneath it, as the machinery was not attached for the permanent beneficial enjoyment of either the soil or the concrete. (Jnan Chand vs. Jugal Kishore—1960 Ac. 331—See Mulla on Transfer of Property, 6th, ed., p. 27). Regard must also be had to the title of the person fixing it and the object of the transaction by which it is transferred or fixed. (Subramanian Firm Vs. Chidhambram—AIR, 1940. Mad. 527). The cases have, therefore, to be examined from all these angles. In reply to a pointed question of the Committee, the Ministry, however, admitted that "the opinion of the Law Ministry was not obtained before the issue of of the instructions dated 25-2-1981." The Committee recommend that the Ministry of Finance should now seek the opinion of the Ministry of law on the issue and review these cases accordingly under intimation to the Committee.

1.62 The Committee note that one of tht requirements for determining duty liability under tariff item 68 is that the goods should be manufactured in a factory. Under the explanation given below tariff item 68. "factory" has the meaning assigned to it in Section 2(m) of the Factories Act, 1948. Under Section 2(m) of the said Act, factory means any premises employing ten or more workers with the aid of power or twenty or more workers without the aid of power. According to the instructions issued by the Central Board of Excise and Customs on 25 February, 1981 assessment of the machinery assembled or erected at site under tariff item 68 would depend on whether assembly erection would amount of manufacture bringing into existence of a new commodity with distinctive name, character and use and also whether the site can be treated as "factory" in terms of Section 2(m) of the Factories Act, 1948. To a question of the Committee as to why assembly/erection at site cannot be treated as factory in cases where ten or more workers might be employed for completing these projects with the aid of power or twenty or more workers without the aid of power, the Ministry of Finance have merely stated that, "it is a matter of fact and has to be determined in each case whether such "places" are "factories" within the meaning of

Section 2(m) of the Factories Act. Moreover whether excisable goods are manufactured in such places, is again a matter of fact. No general comment can be given." The Committee are not saitsfied with the Ministry's reply as this has still not made the position clear. The Committee would like the Ministry of Finance to examine whether the specific cases pointed out in the Audit paragraph were covered by the definition of "factory" and if so, why these cases could not be made liable for further duty.

1.63 The Committee find that where a manufacturer opts for assesment of goods falling under tariff item 68 on the basis of invoices in terms of notification No. 120|75-CE dated 30 April, 1975 the invoice price will be accepted as assessable value under Section 4 of the Central Excises and Salt Act, 1944 provided the manufacturer satisfies certain conditions. One of such conditions to avail of the concessional duty under this notification is that the manufacturer should file a certificate to the effect that price referred to in the invoice represents the price actually charged by him for the relevant sale and that price is the sole consideration for the sale. In cases of clearance of machinery in parts in knocked down condition to be manufactured|assembled at site, the contract is for the supply of complete machinery. During examination the Ministry of Finance stated that they would accept the invoice price as the sale price for the assessment of duty even in cases where the contract is for the whole project and, therefore, no contract prices for the parts exist. It was also stated by the Ministry that the clearance of parts of the machinery in such cases also represented sale in commercial parlance. In reply to a question of the Committee the Ministry of Finance further stated that they would accept the certificate of the manufacturer in such cases to the effect that the price in the invoice represents the price actually charged and that price is the sole consideration for the sale. According to the Ministry, "What is important is the independent character of the sale price and the components of sale price are normal".

1.64 Further, another condition to be fulfilled by the manufacturer to avail of the concession under Notification No. 120/75 dated 30 April, 1975 is that the invoice price is not influenced by any commercial, financial or other relationship whether by contract or otherwise between the manufacturer or any person associated in business with the buyer other than the relationship created by sale of the goods covered by the Contract During examination the Committee asked whether the invoice price for the parts of the machinery would not be treated as influnced by special relationship by contract between the manufacturer and the buyer when the contract was for the supply of the whole machinery. In their note the Ministry of Finance have inter alia stated that "it cannot be said that there is deviation either in procedure or the principle adopted in such cases."

1.65 The Committee are of the view that in the absence of any contract price for the parts and the contract being for the whole project, it cannot be ensured that the parts are not undervalued. In view of this, it would not be correct for the Depatment to accept the cetificate of the manufacturer to the effect that the price in the invoice represents the price actually charged and that the price is the sole consideration for

the sale. Moreover, since the contract price is for the whole project it may also not be correct to treat the sale of the parts as sale in commercial parlance. The Committee also feel that such contracts may tantamount to creating a special relationship between the manufacturer and the buyer. Keeping this in view, the Committee consider it imperative that suitable measures have to be taken in order to ensure that parts are not under-valued in cases of clearance of machinery in knocked down conditions to be manufactured assembled at site and where the contract is for the supply of whole machinery. The Committee would, therefore, recommend that the Ministry of Finance should examine the desirability of applying Notification No. 120/75 dated 30-4-1975 in such cases.

SATISH AGARWAL
Chairman
Public Accounts Committee

NEW DELHI
28 *April*, 1982.
8 *Vaisakha* 1904 (*Saka*)

PART II

MINUTES OF THE 69TH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE HELD ON 23 APRIL, 1982.

The Public Accounts Committee sat from 1500 to 1725 hrs. in Committee Room No. 50, First Floor, Parliament House, New Delhi.

PRESENT

1. Shri Satish Agarwal — *Chairman*

2. Shri Mahavir Prasad
3. Shri Ashok Gehlot
4. Shri M.V. Chandrashekara Murthy — *Members*
5. Shri Sunil Maitra
6. Shri Hari Krishna Shastri
7. Shri Indradeep Sinha

REPRESENTATIVES OF THE OFFICE OF THE C & AG

1. Shri R.C. Suri — *Addl. Dy C&A.G.*
2. Shri N. Sivasubramaniam — *Director of Receipt Audit*
3. Shri G.N. Pathak — *Director of Audit (Defence Services).*
4. Shri R.S. Gupta — *Director of Receipt Audit*
5. Shri R.S. Gupta — *Joint Director*
6. Shri N.C. Roy Choudhury — *Joint Director*
7. Shri G.R. Sood — *Joint Director*

SECRETARIAT

1. Shri H.G. Paranjpe — *Joint Secretary*
2. Shri D.C. Pande — *Chief Financial Committee Officer*
3. Shri K.C. Rastogi — *Senior Financial Committee Officer*
4. Shri K.K. Sharma — *Senior Financial Committee Officer*

The Committee took up for consideration and adopted the following Draft Reports subject to certain modifications/amendments as given in Annexures* I-III

(i) Draft 108th Report on Union Excise Duties—knocked down condition.

(ii) x x x x x

(iii) x x x x x

The Committee then adjourned

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*Annexure I is shown as Appendix VI. Annexures II and III are not printed.

APPENDIX I

(*Vide* Para 1.6)

F. No. 202|46|76-CX. 6

Government of India

Ministry of Finance

Central Board of Excise and Customs

New Delhi, dated the 9th September, 1977

To,

The Collector of Central Excise,
Hyderabad.

Subject : Central Excise—M/s. Bharat Heavy Electricals Ltd.—Manufacture of goods falling under Tariff Item 68—The Special Procedure devised for—Clarification sought for—

Sir,

I am directed to refer to your D.O. letter No. V|68(30) 33|75-MP dated 23-8-1976 addressed to the Board on the above subject. In this connection I am directed to say that in cases referred to in your above letter following procedure should be adopted.

The goods which are cleared over a period of time, in parts against a particular contract, have to be obviously assessed to duty provisionally and when the contract is completed, the assessments should be finalised in the manner as any other type of provisional assessments are finalised. There should not be any great problem about valuation also as in respect of goods covered under Tariff Item 68, the invoice price has to be accepted at the option of the assessee.

In respect of goods which are assembled at site, the clearance should be treated as clearance in the knocked down condition. The value of the goods in the assembled condition should be relevant for assessement purposes and should include the value of the parts, which may have been supplied from outside and may not have been necessarily cleared from M|s. Bharat Heavy Electricals Ltd. what is to be assessed in this case is the completed article.

As regards licensing the premises where an article is to be assembled or erected need not be licensed. It is the manufacturer who is required to obtain a licence and not the consumer even though the manufacturing activity has to extend to the premises of the consumer.

As regarding "time and manner" of debiting duty, as Collector is competent to decide the same technically there can be no objection in permitting the actual debit of duty as the exigencies of a particular case may demand.

Yours faithfully,

Sd/-

(K. D. Tayal)

Under Secretary to the Govt. of India.

Copy alongwith copy of Collector of Central Excise, Hyderabad's letter under reference forwarded to all remaining Collectors for information.

Sd/-

(K. D. Tayal)

Under Secretary to the Govt. of India.

Tel. No. 371025

Copy forwarded to :—

1. The Director of Inspection, Customs and Central Excise, New Delhi.
2. Director of Statistics and Intelligence, New Delhi.
3. All Appellate Collectors of Customs and Central Excise.
4. Director of Training, New Delhi.
5. Joint Director Central Exchange, D.L.F. Cinema Complex, Greater Kailash II, New Delhi.
6. Director of Revenue Intelligence.
7. Comptroller & Auditor General of India, New Delhi.

Copy of D.O.C. No. V/68(30)33/75-MP dated the 4th August, 1975 from C.C.E., Hyderabad addressed to Shri J. Banerji, Member (CX), C.B.E.&C., New Delhi.

Subject : Messrs Bharat Heavy Electricals Ltd.—Manufacture of goods by—the special procedure devised for—clarification sought for certain points.

I enclose herewith a copy of my note dated 24-6-75. It explains the need for special, or rather unusual procedures for the assessment of goods manufactured by Messrs Bharat Heavy Electricals Limited. No risks to revenue are feared, since Messrs Bharat Heavy Electricals Limited are a public sector undertaking and under strict audit control of their own. In connection with the implementation of the prescribed procedures, however, certain legal complications are involved. The nature of these complications are specifically brought out in paragraph 5 and 7 of the enclosure.

2. Since clearances under the same contract may be sperad over more than a year, and in certain cases over a few years, it is not unlikely that rates of duty may differ from time to time during the entire period covered by the first and the last clearances of goods covered by the same contract. Apportioning the assessable value in respect of the different consignments would be a difficult task,—a highly technical task—and unless in the contract itself different values are assigned to different parts, and the different parts are despatched from the factory during the period in which the same rate of duty operates, no conceivable method can be devised for apportioning realistic values to the different parts. How are such cases to be treated? Is it necessary to issue some Notification laying down the particular rate of duty to be applied in such cases? It may be the rate of duty, in force at the time of either the first clearance or at the time of the last clearance of the part of the consignment covered by the same contract.

3. The second point, dealt with in paragraph 7 of the enclosure refers to construction of excisable goods at the premises of the customer. The point is whether for manufacture at the customer's premises a Central Excise licence would be necessary.

4. A general approval of the Procedure as a whole is also requested. In the alternative such advice as may be deemed necessary by the Board, may be communicated so that procedures may be suitably amended in the light of the advice tendered.

Copy of D.O.C. No. V/68(30)33/75-MP dated the 23rd August, 1976 from C.C.E. Hyderabad addressed to Shri S. Venkatesan, Member (CX), C.B.E. & C., New Delhi.

Subject : M/s. Bharat Heavy Electricals Ltd.—Manufacture of goods by—the special procedures devised for—clarification sought for certain points.

I enclose herewith a copy of letter of even no. dated 4-8-75 to Banerji.

2. Clarifications on the issues raised in that letter are now urgently needed. Some of the manufacturers in the private sector are likely to approach for suggestions about the procedures to be followed in the case of manufacturing of goods similar to those, and in circumstances similar to those as stated in the enclosure to my letter to Banerji.

3. If before receipt of further advice from the Board any manufacturer proposes to undertake manufacture of goods in the aforesaid circumstances and manners, I will be extending to hi mthe same procedure as outlined in the enclosure to my letter to Banerji. Of course suitable safeguard would be provided for the safety of revenue.

Note

M/s. Bharat Heavy Electricals Limited are engaged in the manufacture of heavy goods, the delivery of which is liable to be made in parts and over a length of time. The goods undertaken to be manufactured and supplied by them will be covered by some agreement or contract between M/s. B.H.E.L. as sellers and another person as purchaser. In the process of

manufacturing the goods contracted for M|s. B.H.E.L. may have to manufacture various types of intermediary articles, some of which may constitute excisable goods. If such goods fall under item 68 of the Tariff they would not require to be assessed before being used in the manufacture of the contracted goods. However, if some of the intermediary articles, do not fall under item 68 of the Tariff, but under some other item of the Tariff it will have to be examined whether before they are used for subsequent operations, they should be subjected to levy of duty. It may be that under the existing instructions some of such articles might have been exempted from duty or might have been extended the benefit of set off of duty.

2. In respect of the contracted goods payments will not be received by M|s. B.H.E.L. at one single point of time. Terms of payment will be incorporated in the agreement or in the contract. It will not be practical or satisfactory to conclude that payments received from time to time would represent the assessable value of the supplies made immediately before or immediately after the receipt of such payments. It will, therefore, be futile to undertake the task of determining the assessable value of the parts supplied. The assessable value of the entire goods covered by the contract will have to be taken into account and it will have to be ensured that duty is paid on the assessable value which represents the prices contracted between the sellers and the purchasers.

3. Some of the agreements may incorporate an escalation clause. In such a case the total value quoted in the contract may undergo change by the time the full order is supplied by the sellers. It will, therefore, not be possible to close the assessment even though duty might have been paid on the entire value originally quoted in the contract.

4. For the purpose of the working arrangement duty may be levied in the following manner :—

I. When the first clearance is effected duty may be levied on the amount which might have been received by M/s. B.H.E.L. prior to the clearance of such goods. It was explained that certain payments are received by B.H.E.L. almost invariably at the time of the acceptance of the order.

II. When subsequent payments are received by M/s. B.H.E.L., they should give intimation of receipt of such payments within 48 hours of the receipt. Duty should be levied on the amount represented by such payment and subsequent clearances may be effected as though they are clearances of duty paid goods.

III. When the last consignment is cleared against a particular contract, the Department should calculate on the basis of the total contracted value of the goods as to what amount remains to be paid by the manufacturers. The said amount will arrived at after calculation of the duty on the total value as contracted and on calculation of duty already realised. The differential amount will have to be collected before permitting clearance of the last consignment.

5. Since clearances will be spread over a long period it is likely that rates of duty may change and may not remain the same during the entire period which is covered by clearances from time to time against a particular contract.

In the event of the alteration in the rate of duty a question will arise as to which rate of duty should be applied to the goods as a whole or the goods as a part.

This point will have to be referred to the Government and their instructions sought. Pending receipt of instructions, duty may continue to be levied at the rate which is in force at the time duty is assessed.

6. During discussions it was also explained that in certain cases it may not be necessary to complete the entire construction within the factory premises. Partly constructed goods may be taken to the site of the customer and completed it there. Components may also be received directly at the customer's premises and from places other than the factory of M/s. B.H.E.L. In fact in certain cases the components may be received from foreign countries.

7. *Prima facie* it appears that in the case of the type referred to in the previous paragraph it will have to be held that there is continuation of the manufacturing process by M/s. B.H.E.L. and that in chain of such continuation for the sake of convenience part of the construction is undertaken at the premises different from the premises of the factory of M/s. B.H.E.L. The process would undoubtedly involve manufacture within the meaning of the Central Excise Act. The question would arise whether for the under taking of this manufacture the licence obtained by M/s. B.H.E.L. should suffice or that another licence should be obtained either by B.H.E.L. themselves or by the customers of M/s. B.H.E.L. This is also a point which will need to be referred to the Government. Meanwhile we may continue to treat that the subsequent manufacture in the customers' premises would be covered by the licence of M/s. B.H.E.L. and that they would be liable to pay duty on the complete order in the manner laid down earlier. In such a case, however, it would be obvious that the complete goods will not be despatched from the factory itself. As such when the last consignment is despatched from the factory it would be reasonable to charge duty on the entire value of the contract. In such a case M/s. B.H.E.L. may pay full duty only after completing the job at the site. Before completion of the job at the site they should give an intimation to the Central Excise Department and on receipt of such intimation the full duty should be realised in the manner already indicated, and as modified in the present paragraph.

8. It was stated that the clearance of different consignments of Circuit Breakers covered by a single order may cover a period of week to two weeks. The goods are not despatched in a single lot because of the transport problems. In the case of the Circuit Breakers entire duty may be debited in the P.L.A. at the time of the first clearance. The number of gate passes will vary from order to order depending upon the number of lots or consignments which cover the entire order. The gate passes covered by a

single order should be submitted to the Central Excise Officer for the purpose of assessment by them alongwith the invoice and in the invoice the Sl. No. of the gate passes under which goods are cleared from the factory should be clearly indicated.

9. The stationery which is printed within the factory of M/s. B.H.E.L. and which is used within the factory itself would be covered under item 68 of the Tariff, and since the use will be confined within the factory and by the manufacturers it appears that the printed stationery will be exempt from duty. However, the position should be confirmed after further checking up of the relevant issues.

10. Electrical stamping and laminations : Electrical stampings and laminations fall under the Tariff Item different from the item 68 of the tariff. The existing procedure in respect of them shall continue to operate.

11. The duty will be levied on Oxygen also which is generated in the factory itself and used in the factory. Undoubtedly duty will be levied on all the Oxygen which is produced by the factory.

12. The position with regard to the scrap will be examined by the Superintendent or the Assistant Collector concerned separately. If M/s. B.H.E.L. and the officers come to an agreed conclusion the matter may be decided according to the advice of the officers. In case of difference of opinion the matter may be brought to my notice for final decision.

13. The facility of making payments by cheque may be extended to M/s. B.H.E.L.

Sd/- 24-6-75

(S. K. Srivastava) Collector.

APPENDIX II

(*Vide* para 1.13)

Copy of Notification No. 120/75-CE dated 30th April, 1975.

In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts goods falling under Item No. 68 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), cleared from the factory of manufacture, on sale, from so much of the duty of excise leviable thereon as is in excess of the duty calculated on the basis of the invoice price (excluding duty and local taxes, if any, included in such price) charged by the manufacturer for the sale of such goods :

Provided that the aforesaid exemption shall be admissible only if—

(i) the manufacturer files with the Superintendent of Central Excise having jurisdiction a written declaration to the effect that he opts to avail of the said exemption ;

(ii) the manufacturer avails of the said exemption uniformly in respect of all goods, sold by him, which fall under the Item aforesaid ;

(iii) the manufacturer certifies that the price referred to in the invoice represents the price actually charged by him for the relevant sale and that the price is the sole consideration for the sale ;

(iv) the invoice price is not influenced by any commercial financial or other relationship whether by contract or otherwise between the manufacturer or any person associated in business with the buyer other than the relationship created by sale of the aforesaid goods ;

(v) no part of the proceeds of the subsequent sale, use or disposal of such goods accrues either directly or indirectly to or for the benefit of the manufacturer or any person associated in business with him ;

Provided further that a manufacturer shall be entitled to withdraw his option referred to in clause (i) of the preceding proviso after giving to the Superintendent of Central Excise having jurisdiction, a prior notice in writing of at least 7 days and where the manufacturer has withdrawn his option, he shall, unless otherwise directed by the Central Board of Excise and Customs be precluded from availing of the aforesaid exemption during the remaining period of the relevant financial year.

APPENDIX III

(*Vide* para 1.20)

F. No. 350|8|76-TRU,
Government of India,
Ministry of Finance,
Deptt. of Revenue.

NEW DELHI
23rd January, 1978

To

All Collectors of Central Excise

Sir,

Subject : Central Excise—Tariff Item No. 68—Assessment of goods manufactured at site—Regarding.

A question has been raised regarding excisability and determination of assessable value in respect of elevators erected at site on contract basis involving a contract for designing, engineering, purchase of raw materials, production of whatever materials the manufacturer can make in his own factory and final erection at site and testing. The matter has been examined in consultation with the Ministry of Law, Justice and Company Affairs. C.C.E., Bombay's letters to the Board in connection with this subject, along with the opinion of the Chief Inspector of Factories, Maharashtra State, and the Law Ministry's views are enclosed herewith for information.

2. This particular matter and similar matters which may arise from time to time have to be decided on their merits in the light of the definitions of the expressions 'factory' and 'manufacturing process' given in the Factories Act, 1948 and the Law Ministry's advice enclosed to this letter.

Yours faithfully,

Sd|-

G. K. PILLAI,
Under Secretary to the Govt. of India.

1. Extract of the reference from CCE, Bombay dt. 30-4-1976.

In this Collectorate certain manufacturers who are licenced for manufacture of goods falling under item 68 of CET also undertake small or big repair work at site by using some materials that may be required for processing or manufacturing finished products at the site. According to the prevalent practice in the trade, the products which they manufacture are tailor-made and the entire units are not manufactured in the factory itself. They undertake a contract job for installation of the finished products as per requirements/design and type required for the customer. Such is the case in respect of elevators. Designed and constructed by Messrs Otis Elevator Co. Ltd., whose contract involves designing,

engineering, purchase of other materials required to be installed at site, production of materials which they can produce in the factory, as well as erection cost at site and its testing etc.

2. Due to these manifold processes and the fact that their product is not a finished assembled commodity, which they offer for sale as such at the factory gate, they may not be in a position to file price list in terms of Section 4.

3. Such manufacturers, are also not able to avail concession under Notification No. 120|75-CE dated the 30th April, 1975, under which they are entitled to get the goods assessed on the basis of invoice price as against Section 4 price, on account of the fact that the invoice includes according to them, cost of designing, engineering, purchasing of other materials required at site, as also cost of erection of the plant at site.

4. A question has therefore come up as to the assessment of such of the products should be dealt with, when once it is decided that the product manufactured at site is falling under item 68 of CET., and whether the 'site' where the work is carried out on 'job basis' should also be licenced for the purpose of C. Ex. Rules, if the conditions specified under Notification No. 54|75 CE, dated 1st March, 1975 read with Notification No 105| 76-CE, dated the 16th March, 1976 are fulfilled.

5. As regards approval of prices in terms of Sec. 4, the manufacturers are not apparently able to do so, on account of the fact that the invoice price includes, according to them, cost of designing, engineering, purchasing of other materials required at site, as also cost of erection of the plant at site. They have, therefore, made a suggestion that the duty should be recovered on costing basis in respect of the components cleared from the factory, under despatch notes, for being assembled on site. I personally feel that the goods will have to be assessed under Section 4 on the basis of "manufacturing cost" and "manufacturing process" in terms of Volta's Judgement—without making any allowance for the so called designing cost and engineering cost, which are, afterall, an essential part of the manufacturing cost of any product. I also feel that the cost of bought out components assembled directly on site also have to be included, since such bought out items are also parts of the products, though assembled directly on site. The allowance, may have to be made of course for the cost of erection, if any, which may be included in the invoice price (assuming the same is otherwise acceptable as normal price).

2. Extract of the opinion of the Chief Inspector of Factories.

The Chief Inspector of Factories studied the contents of your letter noted above very carefully. The main question raised in your letter is stated in Para 5 and I am directed to advise you as follows:—

This Department covers the Factories on construction sites, under the Factories Act, 1948 whenever they are found amenable under the Act. As you are well aware, a premises becomes a factory if two conditions are satisfied These conditions are : (1) a manufacturing process as defined in the Act, and (2) employment of 10 workers if the manufacturing process is carried on with the aid of power and 20 or more workers if it is carried on without the aid of power.

Thus, we are covering machine shops and repairs shops on construction sites, if they fit in the definition of the term 'factory' as given in Section 2(m) of the Factories Act, 1948. However, till today cases of manufacture and installation of elevators at the construction site has not come to the notice of this Department and therefore, the question of registering such units under the factories Act has never arisen in the past.

However, I feel that the mere installation of elevators at the construction sites may not come within the definition of the manufacturing process. But, if incidental to such installation, if certain parts are actually manufactured at the sites, the manufacturing shed may be amenable under the Act if the other condition of employment of the number of workers is satisfied. This legal position holds good even if the work is undertaken as a contract.

I feel that you may enforce your control over such site productions, whenever you find that the units fall under the definition of the term 'factory' even if the unit is not registered as a factory with this Department and bring such cases to my notice for taking action under the factories Act, 1948.

I hope this will serve your purpose.

3. Law Ministry's views on the issue.

Discussed with Dr. Agarwal, Assistant Legal Adviser, Ministry of Law, Justice and Company Affairs. The question to be decided in this case is whether turn key projects can be considered factories under the Factories Act, 1948 for attracting levy of excise duty in terms of Item 68 of Central Excise Tariff. From the letter of the Inspector of Factories dated 1-2-1977 it is seen that the Factories Act, 1948 covers the factories on site if they satisfy the condition regarding the number of workers employed and if a manufacturing activity as defined in the said Act is carried on in such premises. So far as Factories Act is concerned, it also covers machine shops and repair shops on construction sites if the above referred criteria are satisfied.

As regards classification of the goods manufactured in turn key projects construction sites is concerned, the main criterian would be whether such goods can be considered as manufactured goods attracting levy under Item 68. This question is, therefore, to be considered on merits by the concerned Central Excise authorities. The question of assessable value of such goods will arise only after the classification and it is felt that there is sample provisions in the Central Excise Act and Valuation Rules for arriving at the value of the goods manufactured in turn key projects|sites. The file is returned to the Ministry of Law, Justice and Company Affairs for concurrence with the views given above.

Sd/- G. K. PILLAI,
Under Secretary.

The views expressed in the preceding note are confirmed.

Sd|-
Asstt. Legal Adviser,
Deptt. of Legal Affairs,
Ministry of Law, Justice and Company Affairs.

APPENDIX IV

(*Vide* para 1.35)

F. No. 13/10/81 CX-1

CENTRAL BOARD OF EXCISE & CUSTOMS

NEW DELHI
25th February, 1981

To

All Collectors of Central Excise.

Subject : Classification Plant & Machinery assembled at site under T.I. 68— Question regarding.

Sir,

The question whether plant and machinery assembled at site would attract duty under Item 68 has been examined by the Board in consultation with the Collector of Central Excise. The question was discussed in the 13th South Zone Tariff Conference held in September, 1980, 13th North Zone Tariff Conference held on October, 1980 and 10th East Zone Tariff Conference held in December, 1980.

2. It was noted that following types of situations can arise in a case of "assembly" of plant and machinery at site :

(i) Case of turn-key project etc. where all the parts are manufactured and taken to the assembly site in C.K.D. condition by the organisation which is in charge of construction of the project.

(ii) where some parts are manufactured and taken to assembly site and the balance parts are purchased from market and used in the assembly.

(iii) where some parts are manufactured and used, some purchased from the market and used, and some other are manufactured at site.

3. It was agreed among the Collectors that each of the individual items of goods which are cleared for use in the assembly should pay duty at the time of their clearance from the factory of their production, unless specifically exempt.

3.1 With regard to the further liability of the plant and machinery to duty, the Collectors felt that while each individual case will have to be decided on its own facts and merits, the broad criteria to be satisfied would be—

(i) whether manufacture has taken place.

(ii) whether what is produced is 'good'.

Further whether the site is a 'factory' since 'all goods falling under T.I. 68 manufactured in any premises other than in a factory are exempt from the whole of duty of excise leviable thereon under Notification No. 85/79-CE dated 1-3-1979.

3.2 In respect of above criteria it is clarified that 'assembly' of various components to make a new commodity would amount to 'manufacture'.

3.3 On the question whether 'installations' would merit to be called 'goods' the conference noticed that Sale of Goods Act 1930 defines 'goods' in the following terms :

> "Goods means every kind of moveable property other than auctionable claims and money ; and includes stocks and shares, growing crops and things attached or forming part of the land which are agreed to be served before sale or under the contract of sale".

In the case of Plant and Machinery assembled and installed at site, they are firmly affixed to the ground and normally are not intended to be moved. Further, they are not intended for sale even though there may be cases of transfer ot ownership or even dismantling and sale. Accordingly, these may not merit to be called 'goods'.

3.4 With regard to the question whether the production is in a 'factory', it was felt that this is a question of fact which has to be ascertained. However, this would be necessary only in respect of 'goods' which are manufactured in the premises where they are intended to be installed.

4. The Board agree with the above views. Pending cases may be decided with the help of broad guidelines as indicated above.

Please acknowlege receipt of this letter.

Yours faithfully,

Sd/-
(C. N. Balakrishnan Nair)
Under Secretary

APPENDIX V

(*Vide* para 1.39)

F. No. 13/10/81 CX-1

GOVERNMENT OF INDIA

Central Board of Excise and Customs

New Delhi, the 13th May, 1981

All Collectors of Central Excise.

Subject : Classification of Plant and Machinery assembled at site under Tariff Item 68—Question regarding.

Sir,

Please refer to the Board's letter F. No. 13/10/81-CX-1 dated 25-2-1981 giving certain guidelines with regard to classification of plant and machinery assembled at side under Tariff Item 68.

2. A doubt has been raised regarding the scope of para 3.3 of the letter referred to above, namely, that in view of what has been said in para 3.3, a question arises whether sale of goods is an essential criterion for levy of excise duty. In this connection it may be said that it is *not* the intention to restrict the levy of excise duty on goods which are meant for sale alone. If such an impression or view is created, it is purely incidental and not deliberate. Moreover, as has been mentioned in para 4 of the letter referred to above, the Board's intention was only to issue broad guidelines for the use of Collectorates in deciding various cases, and not to issue any form of tariff advice or specific directions for deciding cases. In view of the above, it is desired that while making use of the guidelines, all the other relevant factors germane to the issue may also be made use of in deciding pending cases.

Yours faithfully,

Sd/-
(R. Deb)
Under Secretary

APPENDIX VI

(Vide Part-II)

MODIFICATIONS/AMENDEMNTS MADE BY THE PUBLIC ACCOUNTS COMMITTEE IN DRAFT HUNDRED AND EIGHTH REPORT RELATING TO UNION EXCISE DUTIES—KNOCKED DOWN CONDITION.

Page	Para	Line/Lines	Modifications/Amendments
29	1.61	23–24	*Add* the following before the word "In" "In the cases mentioned in the Audit Para, the Ministry of Finance, in their latest replies, have gone only by the fact that the machines supplied were 'affixed to the ground'. This fact, by itself, is not enough to take the machines out of the definition of movables. The Transfer of Property Act defines the phrase 'attached to the earth' to mean, rooted in the earth as in the case of trees or shrubs, embedded in the earth as in the case of walls or buildings, or attached to what is so embedded *for the permanent beneficial enjoyment of that to which it is attached.* In order to determine what is or what is not immovable as a result of attachment or annexation to land two tests have been laid down ,viz. (i) the degree or mode of annexation, and (ii) the object of annexation. (Commissioner of Income Tax *vs.* Bhurangiya Coal Co.—AIR 1953 Pat. 298)., what has to be seen is whether the annexation is with the object of permanent beneficial enjoyment of the land or building; machinery attached by bolts to special concrete base so that it could not be easily moved was held not to be part of the structure housing it, or the soil beneath it, as the machinery was not attached for the permanent beneficial enjoyment of either the soil or the concrete. (Jnan Chand *Vs.* Jugal Kishore—1960 Ac. 331—See Mulla on Transfer of Property, 6th. ed., p. 27). Regard must also be had to the title of the person fixing it and the object of the transaction by which it is transferred or fixed. (Subramaniam Firm *Vs.* Chidhambram AIR. 1940 . Mad. 527).—The cases have, therefore, to be examined from all these angles."
29	1.61	23-24	*Substitute"* bring.....necessary" by "review these cases accordingly under intimation to the Committee."

APPENDIX VII

CONCLUSIONS/RECOMMENDATIONS

S. No.	Para No.	Ministry/ Department Concerned	Conclusions/Recommendations
(1)	(2)	(3)	(4)
1	1.55	Ministry of Finance (Department of Revenue)	Tariff item 68 was introduced in the Central Excise Tariff with effect from 1 March, 1975 to cover 'all other goods not elsewhere specified'. Section 4 of the Central Excises and Salt Act, 1944 read with Notification No. 120/75 dated 30 April, 1975 provides for two alternate methods of valuation of goods falling under tariff item 68 for the purpose of levying excise duty. Accordingly, the value can be determined either in terms of the provisions contained in Section 4 of the Central Excises and Salt Act, 1944 or the invoice prices can be accepted as assessable value. Where the manufacturer opts for assessment on the basis of invoice prices in terms of notification dated 30 April, 1975, the invoice prices will be accepted as assessable value subject to the assessees' satisfying certain conditions.
2	1.56	-do-	According to the instructions issued by the Central Board of Excise and Customs in September, 1977 when goods are cleared in knocked down condition to be assembled at site and over a period of time against a particular contract, the clearances are assessable to duty provisionally and the value of the article in completely assembled condition should be taken for assessment purposes.
3	1.57	-do-	In the Audit paragraph under examination it has been pointed out that five units in two collectorates (3 units in Baroda and 2 units in Culcutta Collectorates) manufacturing various items of machines falling under tariff item 68, entered into contracts for manufacture and supply of such machines. The machines were cleared in knocked down condition over a period of time from the factories on payment

(1)	(2)	(3)	(4)
			of duty on the basis of invoice value under notification dated 30 April, 1975 at the rates prevalent at the time of clearances of the parts of such machines. This was not regular as goods assessable to duty are the completed articles and the duty at the rates prevalent on the date of completion of the contract/ supply of goods is, therefore, to be levied on the total value of the machines including assembling charges. According to the Audit, the incorrect assessment led to a short levy of duty of Rs. 24.77 lakhs calculated at the rates prevalent during February, 1977 to May 1979 when the contracts were finalised.
4	1.58	Ministry of Finance (Department of Revenue)	The Committee find that while communicating their comments to the draft Audit paragraph, the Ministry of Finance accepted the audit objection in three cases in the Baroda Collectorate. The Ministry had also informed that in two cases the show cause-cum-demand notices were under process of adjudication and in one case the demand was confirmed but the amount was pending realisation. Out of the remaining two cases (reported from Calcutta Collectorate) one was stated to have become *sub judice* and in the other one demand raised was under the process of adjudication. Later, the Ministry of Finance have, however, informed the Committee that the audit objection was further examined in the light of the fresh instructions issued by the Central Board of Excise Customs on 25 February, 1981 and the Ministry have now maintained that no regularity as such had taken place.
5	1.59	-do-	The Committee find that the Central Board of Excise and Customs issued fresh guide lines on 25th February 1981 on classification of plant and machinery assembled at site under tariff item 68 after the matter was discussed at Zonal Tariff Conferences held in September, October, and December, 1980. In the said instructions, the Board held the view that each of the individual items of goods which are cleared for use in the assembly should pay duty at the time of their clearance from the factory of their production, unless specifically exempt. Further liability of duty on the completed articles produced by/assembling these parts alongwith boughtout items, if any, will arise only when such assembly involves "manufacture" and the site

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			at which assembly takes place is a 'factory' premises. In the case of plant and machinery, it is first to be examined if these plants and machinery are 'goods' manufactured in a 'factory', that is, they are bought and sold after 'manufacture' in that factory and in case the plants and machinery assembled and installed at site as a total entity is not capable of being sold as goods, no further duty is payable. According to the Ministry in the cases involved in the Audit Paragraph goods were cleared in parts at the rates prevalent on the date of the actual removal and, therefore, no irregularity had taken place.
6	1.60	(Ministry of Finance Department of Revenue)	The Committee were informed that the instructions issued by the Central Board of Excise and Customs on 25 February, 1981 did not supersede the earlier instructions issued in September, 1977. According to the Ministry of Finance, "the instructions issued in 1977 are of general nature and do not cover any specific cases". From the information furnished to the Committee it is, however, seen that the instructions issued in September, 1977, in fact, were in response to certain specific references made by the Collector of Central Excise, Hyderabad. As such, if the genuine intention of the issue of instructions in February 1981 was to cover specific cases, as is now being contended by the Ministry, it would have been fairly reasonable to expect from the Central Board of Excise and Customs to lay down adequate guidelines in 1977 itself immediately after the specific references were received from the Collector of Central Excise, Hyderabad. The inordinate time gap of more than 3-1/2 years on the part of the Board to lay down proper guidelines had apparently resulted in a lot of confusion in classifying plant and machinery assembled at site under tariff item 68. What is all the more intriguing is that even the resultant position after the issue of instructions in February 1981 does not appear to be free from confusion so much so that in no less than a period of three months, the Board had again to issue further clarifications (*i.e.* on 13 May, 1981) on the matter. Some of the implications of the instructions issued in February, 1981 are dealt with in the succeeding paragraphs.

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7	1.61	Ministry of Finance (Department of Revenue)	The Committee note that in the instructions issued on 25 February, 1981, the Central Board of Excise and Customs had referred to the definition of 'goods' given in the Sale of Goods Act, 1930 for the purpose of making assessments of plant and machinery manufactured/ assembled at site. The term 'goods' has not been defined in the Central Excise and Salt Act, 1944 and only the term "excisable goods" has been defined in Section 2(d) of the Act. It is pertinent to point out that the Central Excises and Salt Act, 1944 does not stipulate sale of goods for the purpose of levy of duty, the duty being levied on manufacture and not on their sale. According to the Ministry of Finance, "in the absence of a definition in the parent Act it was considered prudent to rely on another enactment of the Parliament to take help or assistance in streamlining the procedure". In the cases mentioned in the Audit Para, the Ministry of Finance, in their latest replies, have gone only by the fact that the 'machines supplied were affixed to the ground'. This fact, by itself, is not enough to take the machines out of the definition of movables. The Transfer of Property Act defines the phrase 'attached to the earth' to mean, rooted in the earth as in the case of trees or shrubs, embedded in the earth as in the case of walls or buildings, or attached to what is so embedded *for the permanent beneficial enjoyment of that to which it is attached.* In order to determine what is or what is not immovable as a result of attachment or annexation to land two tests have been laid down, viz. (i) the degree or mode of annexation, and (ii) the object of annexation. (Commissioner of Income Tax *Vs.* Bhurangiya Coal Co.—AIR 1953 Pat. 298) what has to be seen is whether the annexation is with the object of permanent beneficial enjoyment of the land or building; machinery attached by bolts to special concrete base so that it could not be easily moved was held not to be part of the structure housing it, or the soil beneath it, as the machinery was not attached for the permanent beneficial enjoyment of either the soil or the concrete. (Jnan Chand *Vs.* Jugal Kishore—1960, Ac. 331—See Mulla on. Transfer of Property, 6th. ed., p. 27). Regard

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			must also be had to the title of the person fixing it and the object of the transaction by which it is transferred or fixed. (Subramanian Firm *Vs.* Chidhambram—AIR. 1940. Mad. 527). The cases have, therefore, to be examined from all these angles. In reply to a pointed question of the Committee, the Ministry, however, admitted that "the opinion of the Law Ministry was not obtained before the issue of the instructions dated 25-2-1981". The Committee recommend that the Ministry of Finance should now seek the opinion of the Ministry of Law on the issue and review these cases accordingly under intimation to the Committee.
8	1.62	Ministry of Finance (Department of R venue)	The Committee note that one of the requirements for determining duty liability under tariff item 68 is that the goods should be manufactured in a factory. Under the explanation given below tariff item 68, "factory" has the meaning assigned to it in Section 2(m) of the Factories Act, 1948. Under Section 2(m) of the said Act, Factory means any premises employing ten or more workers with the aid of power or twenty or more workers without the aid of power. According to the instructions issued by the Central Board of Excise and Customs on 25 February, 1981 assessment of the machinery assembled or erected at site under tariff item 68 would depend on whether assembly/erection would amount to manufacture bringing into existence of a new commodity with distinctive name, character and use and also whether the site can be treated as "factory" in terms of Section 2(m) of the Factories Act, 1948. To a question of the Committee as to why the assembly/erection at site cannot be treated as factory in cases where ten or more workers might be employed for completing these projects with the aid of power or twenty or more workers without the aid of power, the Ministry of Finance have merely stated that, "it is a matter of fact and has to be determined in each case whether such "places" are "factories" within the meaning of Section 2(m) of the Factories Act. Moreover whether excisable goods are manufactured in such places, is again a matter of fact. No general comment can be

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			given". The Committee are not satisfied with the Ministry's reply as this has still not made the position clear. The Committee would like the Ministry of Finance to examine whether the specific cases pointed out in the Audit paragraph were covered by the definition of "factory" and if so, why these cases could not be made liable for further duty.
9	1.63	(Ministry of Finance Department of Revenue)	The Committee find that where a manufacturer opts for assessment of goods falling under tariff item 68 on the basis of invoice prices in terms of notification No. 120/75-CE, dated 30 April, 1975 the invoice price will be accepted as assessable value under Section 4 of the Central Excises and Salt Act, 1944 provided the manufacturer satisfies certain conditions. One of such conditions to avail of the concessional duty under this notification is that the manufacturer should file a certificate to the effect that price referred to in the invoice represents the price actually charged by him for the relevant sale and that price is the sole consideration for the sale. In cases of clearance of machinery in parts in knocked down condition to be manufactured/assembled at site, the contract is for the supply of complete machinery. During examination the Ministry of Finance stated that they would accept the invoice price as the sale price for the assessment of duty even in cases where the contract is for the whole project and, therefore, no contract prices for the parts exist. It was also stated by the Ministry that the clearance of parts of the machinery in such cases also represented sale in commercial parlance. In reply to a question of the Committee the Ministry of Finance further stated that they would accept the certificate of the manufacturer in such cases to the effect that the price in the invoice represents the price actually charged and that price is the sole consideration for the sale. According to the Ministry, "What is important is the independent character of the sale price and the components of sale price are normal".
10	1.64	-do-	Further, another condition to be fulfilled by the manufacturer to avail of the concession under Notification No. 120/75, dated 30 April,

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			1975 is that the invoice price is not influenced by any commercial, financial or other relationship whether by contract or otherwise between the manufacturer or any person associated in business with the buyer other than the relationship created by sale of the goods covered by the contract. During examination the Committee asked whether the invoice price for the parts of the machinery would not be treated as influenced by special relationship by contract between the manufacturer and the buyer when the contract was for the supply of the whole machinery. In their note the Ministry of Finance have *inter alia* stated that "it cannot be said that there is deviation either in procedure or the principle adopted in such cases".
11	1.65	(Ministry of Finance Department of Revenue)	The Committee are of the view that in the absence of any contract price for the parts and the contract being for the whole project, it cannot br ensured that the parts are not undervalued. In view of this, it would not be correct for the Department to accept the certificate of the manufacturer to the effect that the price in the invoice represents the price actually charged and that the price is the sole consideration for the sale. Moreover, since the contract price is for the whole project it may also not be correct to treat the sale of the parts as sale in commercial parlance. The Committee also feel that such contracts may tantamount to creating a special relationship between the manufacturer and the buyer. Keeping this in view, the Committee consider it imperative that suitable measures have to be taken in order to ensure that parts are not under-valued in cases of clearance of machinery in knocked down conditions to be manufactured/assembled at site and where the contract is for the supply of whole machinery. The Committee would, therefore, recommed that the Ministry of Finance should examine the desirability of applying Notification No. 120/75, dated 30-4-1975 in such cases.

MGIPRRND—II—12 LSS/82—3-6-82—1075